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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/995,097	11/27/2001	Nick (Nicholas Sheppard) Bromer		9382

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EXAMINER

KLEBE, GERALD B

ART UNIT

PAPER NUMBER

3618

DATE MAILED: 04/01/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/995,097

Applicant(s)  
Bromer

Examiner  
Gerald Klebe

Art Unit  
3618



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1) ☒ Responsive to communication(s) filed on Nov 27, 2001

2a) ☐ This action is FINAL.

2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

4) ☒ Claim(s) 1-12 is/are pending in the application.

4a) Of the above, claim(s) 4, 7, and 10 is/are withdrawn from consideration.

5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.

6) ☒ Claim(s) 1-3, 5, 6, 9, 11, and 12 is/are rejected.

7) ☒ Claim(s) 8 is/are objected to.

8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9) ☒ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on Nov 27, 2001 is/are objected to by the Examiner.

11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.

12) ☒ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) ☐ All b) ☐ Some\* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14) ☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

*G. Klebe*  
22 Nov 2002

## Attachment(s)

15) ☒ Notice of References Cited (PTO-892)

18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

19) ☐ Notice of Informal Patent Application (PTO-152)

17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_

20) ☐ Other:

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## DETAILED ACTION

### *Restriction/Election*

1. This application contains claims directed to the following patentable distinct species of the claimed invention:

Species I. Fig 1, drawn to a skate having a hard toe-cap lifter to actuate a front-wheel-engageable brake pivoted to a second wheel, in class 280, subclass 11.211;

Species II. Fig 2, drawn to a skate having a foot-actuated lifter to actuate a surface-engageable brake pivoted by linkage connected to the skate frame;

Species III. Fig 3, drawn to a skate having a wheel-engageable brake of fiber-reinforced elastomer belt and pivotably connected to a second wheel of the skate.

2. During a telephone conversation with the Pro Se Applicant, Mr. Nicholas Bromer, Reg. No. 33, 478, on March 18, 2002 at 7:50 PM ET a provisional election was made with traverse to prosecute the invention of Species Group I, claims 1, 2, 3, 5, 6, 8, 9, 11, and 12 being considered readable thereon. Affirmation of this election must be made by the Applicant in replying to this Office action. Upon the allowance of a generic claim, Applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, Applicant must indicate which are readable upon the elected species. MPEP Section

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809.02(a). Currently, there appears to be no allowable generic claim. Claims 4, 7 and 10, being drawn to a non-elected species are hereby withdrawn from further consideration.

***Oath/Declaration***

3. The Oath/Declaration is defective. It does not identify the city and state or of residence of the inventor. A new Oath/Declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP Sections 602.01 and 602.02.

***Drawings***

4. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

5. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore:

a. the toe of the user and the aspect(s) of the "toe" and/or foot indicating the feature claimed as "dorsiflexion" as recited in claim 1, must be shown or the feature(s) canceled from the claim;

b. the "return spring" as recited in claim 12, line 2, must be shown or the feature(s) canceled from the claim(s).

No new matter should be entered.

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***Specification -- Objections***

6. The use of the trademark KEVLAR has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology [emphasis added].

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Carlsmith (US 5232231).

Carlsmith discloses, for a user having a foot, a skate, at least one wheel (42), and a skate brake (30) actuated by "dorsiflexion" (refer to Figs 2 and 10; and to the Abstract lines 3-8 and col 10, lines 24-61); and having (re: claim 12) a return spring (22) counteracting the dorsiflexion (refer col 10, lines 2-6).

9. Claims 1-3, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Intengan (US 6053511).

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Intengan discloses, for a user having a toe, a skate, at least one wheel, and a skate brake (combination 49, 54, 56, and 55) actuated by dorsiflexion (refer Fig 3A, the abstract, lines 1-4, and col 5, lines 1-9), the skate brake further comprising (re: claim 2) a lifter (42) moved upward by dorsiflexion to actuate the skate brake (refer col 5, lines 5-9), and wherein (re: claim 3) the lifter is pivoted (items 46- 47-48, and refer col 5, lines 36-38) to be moved upward by the toe (and further comprising (re: claim 12) a return spring (Fig 6, item 53) counteracting the dorsiflexion col 5, lines 50-54).

10. Claims 1-3, 5, and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Bellehumeur (US 5609346).

Bellehumeur discloses, for a user having a toe, a skate (10), at least one wheel (14-17), and a skate brake (26) actuated by dorsiflexion (refer Figs 2, 4, 5), the skate brake further comprising (re: claim 2) a lifter (22) moved upward by dorsiflexion (compare Figs 4 and 5) to actuate the skate brake (refer col 3, lines 5-9), and wherein (re: claim 3) the lifter is pivoted (refer Figs 2, 4, 5, and refer col 3, lines 1-9) to be moved upward by the toe (compare Figs 4 and 5), and further comprising (re: claim 5) a brake shoe couple to the lifter wherein the shoe bears on at least one wheel of the brake when actuated (refer col 3, lines 6-9); and further wherein (re: claim 6) the brake shoe is directly coupled to the lifter (refer Fig 2).

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Belleheur (US 5609346).

As discussed above, Belleheur discloses all of the features of claim 5 from which claims 9 and 11 depend. Belleheur lacks explicit disclosure of the material of the brake shoe wherein it comprises fiber-reinforced elastomer, and further wherein the elastomer comprises urethane.

However, it is old and well known in the skate manufacturing arts to use fiber-reinforced elastomeric materials including elastomerics comprising urethane in various parts of skates including skate brakes.

***Allowable Subject Matter***

13. Claim 8 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Prior Art made of Record***

14. The prior art made of record and not relied upon is considered pertinent to the Applicant's disclosure; the prior art of Flater teaches a wheel-engaging brake for and in-line skate in which the brake is actuated by dorsiflexion; Hoskin teaches a skate brake in which both a ground engaging brake and a wheel engaging brake are simultaneously employed when the brake

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is actuated by the user. These references also show various other features in common with some of the features disclosed in the instant application.

***Conclusion***

15. Any inquiry concerning this or earlier communication(s) from the examiner should be directed to Gerald B. Klebe, telephone 703-305-0578, facsimile 703-308-2571, Mon.-Fri. 8:00 AM-4:30 PM ET, or to Supervisory Patent Examiner Brian L. Johnson, Art Unit 3618, at 703-

308-0885.

*gbklebe*  
gbklebe / Art Unit 3618 / 22 March 2002

**AVRAHAM LERNER  
PRIMARY EXAMINER**

*Ari Lerner 3/22/02*